

# PREVENTING WORK BULLYING, HARASSMENT OR DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY AND INTERSEX STATUS

## Introduction

The ACTPS is committed to maintaining a positive working environment that is safe, healthy and free from all forms of work bullying, discrimination and harassment. A key way in which we can embed this environment is by supporting the development of actively inclusive policies, procedures and interactions with one another.

As with other forms of inappropriate behaviour or misconduct, the ACTPS has a zero-tolerance approach to homophobic, biphobic or transphobic behaviour. These behaviours will be managed and resolved in accordance with whole-of-government policies, including the procedures set out in Section H (Workplace Values and Behaviours) of ACTPS Enterprise Agreements. Changes to federal law via the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*, also make it unlawful to discriminate against a person on the basis of their sexual orientation, gender identity or intersex status. Same sex couples are also protected from discrimination under the new definition of 'marital or relationship status' in the Act. The *ACT Discrimination Act 1991* contains similar protections for attributes such as sex, sexuality and gender identity.

## What does discrimination on the basis of sexual orientation, gender identity and intersex status look like?

**Direct discrimination** means treating a person less favourably on the basis of their sexual orientation, gender identity or intersex status than a different person without that attribute would be treated in similar circumstances. It may be direct discrimination if:

- *An employer refuses a promotion to an employee after learning that the employee is bisexual (discrimination based upon sexual identity).*
- *A shop assistant refuses to serve a person who identifies and presents as a woman but has a deep masculine sounding voice, because she felt uncomfortable about that person's gender identity (discrimination based upon gender identity).*
- *A physiotherapist refuses to treat an intersex person because the person's biological characteristics made the physiotherapist uncomfortable (discrimination based upon intersex status).*

**Indirect discrimination** means imposing, or proposing to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with a particular sexual orientation, gender identity or intersex status, and which is not reasonable in the circumstances. Discrimination may be unlawful when it occurs in protected areas of public life such as employment, education, or the provision of goods, services and facilities. It may be indirect discrimination if:

- *An employer's benefits policy, which provides spousal benefits to an employee's husband or wife (e.g. discounted travel or gym membership), does not provide those same benefits for a lesbian employee with a same-sex partner (discrimination based upon sexual identity).*
- *An organisation's human resource policies do not permit changes to an employee's records – such a policy may require a transgender person to continually disclose information about her gender identity in order to explain discrepancies in personal details (discrimination based upon gender identity).*
- *A policy which deems that certain medical treatment, such as for ovarian cancer, is only appropriate for women, might disadvantage an intersex man who has both male and female sex characteristics (discrimination based upon intersex status).*

<sup>1</sup> This resource has been developed using material from the "Sexual orientation, gender identity and intersex status discrimination: Information Sheet" (Australian Human Rights Commission)

## What is the impact of work bullying, harassment or discrimination on the basis of sexual orientation, gender identity and intersex status?

There is an individual and organisational cost associated with bullying, harassment or discrimination of this kind. The impact on the individual subject to the behaviour can be significant. A recent UN Report confirms the continuation of acts of violence committed against members of the LGBTIQ+ community due to their sexual orientation and gender identity. Such minority stressors are associated with increased psychological distress. For example, same sex attracted and bisexual people have been found to have consistently higher rates of various anxiety or mental health issues than their heterosexual counterparts. While there is less data relating to the negative impact upon transgender and intersex people, research does indicate that experiences of discrimination and violence, as well as rates of poor mental health are higher for these cohorts than for lesbian, gay and bisexual people. A recent study of transgender people found that they suffered very high levels of depression and anxiety, much more so than in general population. They can also face difficulties in accessing appropriate medical care and health services, as well as systemic discrimination such as obtaining legal recognition of their gender.

## How can I resolve workplace issues relating to sexual orientation, gender identity and intersex status?

The ACTPS has comprehensive procedures in place to ensure that any type of workplace issue, including those that relate to bullying, harassment or discrimination, are managed and resolved efficiently and effectively.

Employee can seek advice on these processes from their supervisor, manager, relevant executive, local HR team or RED Contact Officer.

<sup>1</sup> *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23

<sup>1</sup> Australian Bureau of Statistics (2008). National Survey of Mental Health and Wellbeing: Summary of Results, 2007, ABS catalogue no.326.0, Canberra. Available from: [www.abs.gov.au](http://www.abs.gov.au)

1. HYDE, Z., DOHERTY, M., TILLEY, P. J., MCCAIL, K., ROONEY, R., AND JANCEY, I. (2013). *THE FIRST AUSTRALIAN NATIONAL TRANSMENTAL HEALTH STUDY: SUMMARY OF RESULTS*. CURTIN UNIVERSITY.